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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,469	02/04/2002	Patrick Alexandre	111504	1617
7590 Oliff & Berridge PO Box 19928 Alexandria, VA 22320			EXAMINER WILLIAMS, CATHERINE SERKE	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 02/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

80

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/018,469

Applicant(s)

ALEXANDRE ET AL.

Examiner

Catherine S. Williams

Art Unit

3763

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 4, 9 and 12.
Claim(s) rejected: 1-3, 5, 6, 8, 10.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Drawings

The objection to drawing figure 3 has been withdrawn in light of the remarks in the after final response filed 1/10/07.

Figures 2 and 3 were received on 7/22/04. These drawings are approved.

Response to Arguments

Applicant's arguments, regarding the claims, filed 1/10/07 have been fully considered but are not persuasive.

Applicant argues that Sanford fails to disclose a “resistant barrier which ensures a good propagation of the shock wave”. Applicant also states that the previous response to applicant’s argument fails because (1) nothing in the disclosure of Sanford can reasonably be considered to explicitly or impliedly disclose that the discharge means (55) generates a shock wave and (2) Sanford does not show “good propagation” in light of applicant’s specification.

In response, the instant claims are exceedingly broad and even in light of applicant’s specification the prior art reads on the claim limitations.

Applicant claims “a shock wave generator device”. The instant specification discloses explosive charges (page 5) and propulsion of a weight (page 6) as examples of “a shock wave generator device”. Additionally, one skilled in the art would understand that shock waves are generated from explosions, released compressed gas, lightening, and aircraft, to name a few shock wave generators. In fact, one skilled in the art would know that explosions, large and small, generate shock waves. Fire crackers and C4 explosives both generate shock waves.

Sanford teaches a discharge means (55) which is further disclosed to be an explosive charge or compressed gas source. See 8:56-70. Since one skilled in the art would know that explosions and release of compressed gas result in generation of a shock wave(s), one skilled in the art would understand that Sanford's discharge means is "a shock wave generator". Even if one skilled in the art didn't have expertise in explosives, applicant's specification teaches that explosions, even from small quantities of explosive, are shock wave generators and using applicant's own disclosure, one skilled in the art would understand that Sanford's discharge means is "a shock wave generator". Clearly, Sanford meets applicant's claim limitation.

"A good propagation" is a completely relative term. It begs the question, good in comparison to what? Applicant has not provided what is meant by the term "good" or "good propagation" other than the fact that ultimately drug is delivered into the patient's body. The instant specification states "The plane shock wave produced on the upstream face of the fixed barrier propagates through this barrier and violently ejects the active principle from the cavities..." (page 4). It seems from this statement that good propagation equates to the fact that the active principle is ejected from the cavity. As stated before, Sanford results in active principle being ejected from a cavity; therefore, Sanford's barrier meets applicant's disclosure of "good propagation".

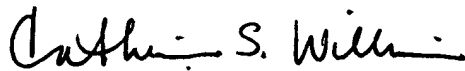
Conclusion

In the spirit of moving prosecution forward, it is recommended that the claims be amended to further limit the shock wave generator, i.e. provide limitations as to the type and/or size of the explosive pellet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 571/2724970. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas D. Lucchesi can be reached on 571/2724977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Catherine S. Williams
February 8, 2007

CATHERINE S. WILLIAMS
PRIMARY EXAMINER

Approved
2/8/07



Application No. 10/018,469
Replacement Drawing Sheet

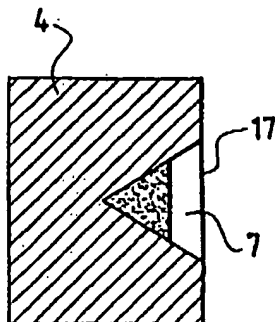


FIG. 2

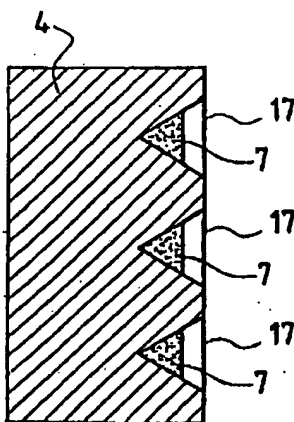


FIG. 3